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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,027	01/05/2006	Koen Van den Heuvel	62367-392843	1143

27510 7590 02/16/2011

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EXAMINER	
WEST, JEFFREY R	

ART UNIT	PAPER NUMBER
2857	

NOTIFICATION DATE	DELIVERY MODE
02/16/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	**Application No.**	**Applicant(s)**	
	10/537,027	DEN HEUVEL ET AL.	
	Examiner	**Art Unit**	
	Jeffrey R. West	2857	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *139,140,144-146,150,153,155-159,162,164-168,171 and 173-187.*
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Jeffrey R. West/
Primary Examiner, Art Unit 2857

Continuation of 11:
Applicant argues:
5. In portions of column 15 relied upon by the Examiner for the above assertion, Givens discloses that "[w]hen the test sequence and tone are output, the patient indicates when a test tone is audible." (See, Givens, col. 15, lns. 8-10.) In response to the indication, a "processor... generates and/or selects a web page 70c to be served to a client at the test administration site 10." (See, Givens, col. 15, lns.10-13; emphasis added.) Givens further discloses that such a web page "may be served to the test administration site 10 by the local device 50, 50' to allow control of the local device 50, 50'." (See, Givens, col. 15, lns. 59- 61; emphasis added.) More specifically, the web page "may be provided from the server of the local device 50, 50' to a client.., at the test administration site 10 and includes test control parameters which can be activated and/or adjusted by the clinician during the test." (See, Givens, col. 15, lns. 62-66; emphasis added.)
6. As it clear from Givens, the client "at the test administration site" is a clinician remote from the recipient. Accordingly, Givens discloses generating a web page enabling a clinician at a remote test administration site to control the test in response to recipient input. That is, the clinician is controlling the test in response to the recipient's indication of when a tone is audible. Applicant submits that the equipment that performs such clinician controlled testing is not "a recipient subsystem configured to . . . communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs," as recited in Applicants' claim 139. (Emphasis added.) In particular, Applicants submit that Givens fails to disclose performing multiple portions of a single test, much less performing a series of different tests, substantially independent of the test administration site, in response to a series of recipient inputs. Rather, Applicants submit that Givens' local device continually prompts the test administration site to control a hearing test performed by the local device.
7. In addition, the portion of column 14 cited by the Examiner discloses that "the data processing system 70 receives commands from the clinician at the test administration site 10 and controls the function generator 56 and attenuator 57 to output the desired test sequence and tone . . . to the client or patient," and the cited portion of column 12 discloses tone output and recipient input devices. (See, Givens, col. 14, lns. 48-52 and col. 12, lns. 38-54.) As such, Applicants submit that the portions of columns 12 and 14 of Givens relied upon by the Examiner do not cure the deficiencies of column 15.

First, the Examiner maintains that Givens discloses the performance of a series of different tests by disclosing, inter alia, the performance a first test sequence for one ear and a second test sequence for a second ear (see, column 14, lines 48-56 and column 19, lines 34-40).
Second, with respect to "a recipient subsystem configured to . . . communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs", the Examiner asserts that column 14, lines 39-56 of Givens indicates that the "local device 50" (i.e. recipient subsystem) communicates with the cochlear implant to perform the test sequence in response to initiation by the clinician. The Examiner also asserts that column 14, lines 57-59 and column 15, lines 8-19 of Givens discloses that, in response to a series of recipient inputs, the test sequence steps through a series of tones and relays information back to the local processor 70p which generates information about the test to be served to a client at the test administration site, wherein the information about the test is stored locally. As such, one having ordinary skill in the art would recognize that the recipient subsystem local to the patient communicates with the cochlear implant to perform the series of after-care tests substantially independent of the clinician subsystem in response to a series of recipient inputs.
The Examiner also notes that the term "substantially independent" in the claim does not require that the recipient subsystem not communicate or interact with the clinician subsystem. For example, claim 155 specifies that the clinician subsystem initiates the series of after-care tests and, as illustrated in Figure 2 of the instant application, after the clinician evaluates test results, the clinician asks the patient to perform other tests. As such, the Examiner asserts that interacting with the clinician subsystem to initiate and/or select the tests to be performed at the recipient subsystem does not mean that the performance of the series of after-care tests is not "substantially independent" of the clinician subsystem.

Applicant argues:
15. Faltys is directed to a system for fitting or programming a cochlear stimulation system for a patient utilizing objective measurements rather than subjective feedback. (See, Faltys, col. 3, lns. 29-47.) In Faltys, the clinician utilizes the fitting system to instruct the cochlear implant system to deliver an electrical stimulation signal to the patient. (See, Faltys, col. 5, ln. 52-col. 6, ln. 42; and col. 15, lns. 19-56.) The fitting system records an objective measurement of the patient's response to the stimulation. (See, Faltys, col. 6, lns. 32- col. 8, ln. 23.) Based on the objective measurement, the clinician adjusts the stimulation provided. (See, Faltys, col. 6, lns. 32- col. 8, ln. 23; and col. 15, lns. 52-56.) This procedure is iteratively repeated to determine a patient's threshold and comfort levels. (See, Faltys, col. 6, lns. 32- col. 8, ln. 23; col. 15, lns. 52-56; and col. 16, lns. 19-23.) In other words, in the system of Faltys, a clinician operates the tests, evaluates objective feedback and adjusts stimulation signals applied to the patient. (See, Faltys, col. 6, lns. 32- col. 8, ln. 23; and col. 15, lns. 19-56.) Due to this large amount of clinician involvement, Applicants submit that Faltys fails to disclose any local device that enables a patient to proceed through a series of after-care tests, via the patient's input to the local device, substantially independent of a remote site. As such, Applicants submit that Faltys fails to cure the above-noted deficiencies of Givens.

As noted above, the Examiner maintains that Given discloses "a recipient subsystem configured to . . . communicate with the cochlear implant and to perform the series of after-care tests, substantially independent of the clinician subsystem, in response to a series of recipient inputs". Therefore, Applicant's arguments are not considered to be persuasive as Faltys is only relied upon to modify Givens to explicitly specify that at least one of the one or more after-care tests comprises a cochlear implant integrity check, determines whether the dynamic range of each of a plurality of electrodes is set correctly, and evaluates the effectiveness of the cochlear implant.

/JRW/